

1. FIRST APPEALS No. 78 to 82, 91, 95, 96, 100, 101,

103,105,109,111,114 to 117 of 1990

MR.UMESH A.TRIVEDI, A.G.P. for appellants

MR RM VIN for Respondent No. 1

MR MG NAGARKAR for Respondent No. 2

2. FIRST APPEALS NO. 83 to 90, 92, 93, 94, 97, 98, 99, 102, 104, 106, 107, 108, 110, 112 & 113 of 1990.

MR PRASANT G.DESAI, G.P. for the appellants.

MR RM VIN, for respondent no.1

MR MG NAGARKAR, for respondent no.2

3. CROSS OBJECTION No. 3330 of 1990

MR RM VIN for Objector

MR UMESH A.TRIVEDI, A.G.P. for Respondent No. 1

MR MG NAGARKAR,for respondent no.2.

4. CROSS OBJECTIONS NO. 3331 to 3342 of 1990

MR RM VIN for objectors

MR PG DESAI, G.P. for respondent no.1

MR MG NAGARKAR for respondent no.2.

5. CROSS OBJECTIONS NO.3168 to 3184 of 1990

MR PRANAV G.DESAI for Objectors

MR UMESH A.TRIVEDI, A.G.P.for respondent no.1

MR MG NAGARKAR, for respondent no.2.

6. CROSS FIRST APPEALS NO.2511 to 2520 of 1992

MR RN SHAH, advocate for the appellants.

MR BD DESAI, AGP for respondent no.1

MR MG NAGARKAR for respondent no.2.

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 20 /11/98

#### ORAL JUDGEMENT

(Per : Panchal, J.)

First Appeals No.78/90 to 117/90 are filed by the Officer on Special Duty, Land Acquisition, Ahmedabad under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908 against common judgment and award dated April 5, 1989 rendered by the learned 2nd Extra Assistant Judge,

Bharuch, in Land Acquisition Reference Cases No.35/85 to 50/85 and 52/85 to 74/85 which were consolidated with Land Acquisition Reference Case No. 51/85. In First Appeals No. 78, 79, 81, 82, 85, 86, 87, 91, 92, 95, 96, 99, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114 and 115, all of 1990, Cross-Objections are filed by the original claimants under the provisions of Order-41 Rule-22 C.P.C.; whereas claimants in Land Acquisition Reference Cases No.39/85, 40/85, 44/85, 45/85, 46/85, 49/85, 50/85, 54/85, 55/85 and 59/85 have filed cross appeals in First Appeals No.83/90, 84/90, 88/90, 89/90, 90/90, 91/90, 94/90, 97/90, 98/90 and 102/90 respectively. Their numbers are First Appeals No. 2512, 2519, 2518, 2517, 2516, 2515, 2514, 2511, 2520 and 2513 all of 1992 respectively. As all these proceedings arise out of common judgment and award rendered by the Reference Court, we propose to dispose of them by this common judgment.

2. The facts in nut-shell are that acquisition proceedings were initiated for acquiring lands of village Bhadkodara, Taluka Ankleshwar, District : Bharuch for expansion of Ankleshwar Industrial Estate. For this purpose, notification under section 4 of the Land Acquisition Act, 1894 ("the Act" for short) was published in Government Gazette on March 30, 1979. The interested persons were issued notices, who had filed objections. After considering the objections, Land Acquisition Officer had submitted report under section 5(A)(2) of the Act to the State Government. On consideration of the report submitted by the Land Acquisition Officer, the State Government was satisfied that the lands mentioned in notification which was issued under section 4 of the Act were needed for expansion of Ankleshwar Industrial Estate and, therefore, declaration under section 6 of the Act was made on November 13, 1981 which was also published in Government Gazette. Thereafter all the interested persons were served with notices under section 9(3) as well as section 9(4) of the Act. The land owners appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 1,25,000/per Hectare i.e. Rs.1250/- per Are. After hearing the parties, Officer on Special Duty offered compensation to the land owners at the rate of Rs. 22,000/- per Hectare i.e. Rs. 220/per Are by award dated March 29, 1984. The land owners were not satisfied with the offer made by the Officer on Special Duty and were of the opinion that compensation offered was insufficient and inadequate. Therefore, they sought references to the Court. Accordingly, references were made to the District Court, Bharuch, which were registered as Land Acquisition

Reference Cases No. 35/85 to 74/85. Before the Reference Court, the claimants claimed compensation at the rate of Rs. 1,250/- per Are. The Land Acquisition Reference Cases No.35/85 to 50/85 and 52/85 to 74/85 were consolidated with Land Acquisition Reference Case No. 51/85. In the reference applications, it was stated by the claimants that Officer on Special Duty (Land Acquisition) had not considered sale instances of nearby lands of the same village while determining the market value of the lands on the date of publication of notification under section 4 of the Act and having regard to potentiality of the lands acquired as well as development of industries in the area, they were entitled to compensation at the rate of Rs. 1,250/per Are.

3. The reference applications were contested by the State Government by filing reply. It was stated in the written statement that references were time barred and, therefore, liable to be rejected. It was claimed that after receipt of notices under section 9 of the Act, the claimants had not produced sale instances in support of their claim for fixation of compensation at the rate of Rs. 1250/- per Are and as they had unconditionally accepted the compensation, reference applications should be dismissed. It was also pleaded that the claimants having failed to submit claims before the Land Acquisition Officer pursuant to notices under section 9 of the Act, their references for additional compensation were not maintainable in view of the provisions of section 25 of the Act.

4. Reply to the reference applications was submitted by the acquiring body i.e. Gujarat Industrial Development Corporation at Exh.13. It was stated therein that as the compensation offered by the Officer on Special Duty (Land Acquisition) was reasonable and proper, the reference applications should not be entertained. It was stressed that the demand of the claimants was very high and in view of the disadvantageous situation of the acquired lands, references were liable to be rejected. It was claimed that the acquired lands were far away from Ankleshwar Railway Station as well as Bus Stand and, therefore, the claimants were not entitled to additional compensation as claimed in the reference applications.

5. Having regard to the pleadings of the parties, necessary issues for determination were raised by the Reference Court. The claimants examined witness Chimanlal Jerambhai Patel at exh.59 in support of their claim advanced in reference applications. They also

examined witness Jamolbhai Hirabhai at Exh.91 to substantiate their claim for higher compensation. The claimants produced judgments rendered by the Reference Court in respect of lands situated in villages Kosamadi, Bhadkodara and Gadkhol of Ankleshwar Taluka at Exhs. 22, 46 and 47 respectively. They also relied upon certified copies of entries made in the Index register which were made available to them by Office of Sub-Registrar, Ankleshwar under section 57 of the Registration Act, 1908 and produced them at Exhs. 60,61, 62, 63, 64, 65, 66, 67 and 92. Witness Jamolbhai Hirabhai, whose evidence was recorded at Exh.91, produced certified copy of the entry made in the Index register relating to sale of survey No. 205/1 of village Bhadkodra by deed dated March 2, 1982 executed in favour of M/s. Dattani Development Corporation at Exh.93.

6. After hearing the learned Advocates appearing for the parties and considering the evidence adduced, the Reference Court held that Exh. 92 which is entry from Index register relating to a lease deed of land of village Bhadkodra, was not helpful for determining compensation, as the land was leased by G.I.D.C. to Jaldarshan Society after its development. So far as Exh.93 is concerned, it was observed by the Reference Court that the sale instance was of the year 1982 and related to non-agricultural land of village Bhadkodara and, therefore, was not relevant for the purpose of determining market value of the acquired lands. The Reference Court noted that the sale instance produced at Exh.67 showed that price of lands in village Bhadkodara in the year 1981 was Rs. 11.47 ps. per sq.mt. i.e. Rs. 1147/- per Are; whereas Exh.46 which was previous award relating to acquisition of lands situated in village Bhadkodra showed that market value of the lands was Rs. 350/- per Are in the year 1977. The Reference Court was of the opinion that normally non-agricultural land fetches double the price than that of agricultural land and, therefore, after deducting half the price, held that market value of the acquired lands situated in village Bhadkodra would be Rs. 575/- per Are in the year 1981. As the notification under section 4 of the Act was of the year 1979, Reference Court was of the opinion that 15% should be deducted from the market value of the lands situated in village Bhadkodara which was assessed for the year 1981 and deduced that the value of the acquired lands would be Rs. 525/- per Are in the year 1979. The Reference Court also heavily relied upon the award delivered by the Court which was produced at Exh.46 for the lands situated in village Bhadkodra. By the said judgment, compensation at the rate of Rs. 350/- per Are

was determined for the lands situated in village Bhadkodara. In view of the time lag between the notifications issued under section 4 of the Act, the Reference Court was of the opinion that 15% rise in price should be given while determining market value of the acquired lands and, therefore, compensation payable to the claimants on the basis of said award would be at the rate of Rs. 455/per Are. The Reference Court thereafter considered potentiality of the lands acquired and noted that the lands acquired could be used either for building purpose or industrial purpose and, therefore, the claimants were entitled to a further rise in price to the extent of 35%. Thus, the Reference Court in ultimate analysis determined compensation payable to the claimants at the rate of Rs. 590/- per Are. The Reference Court further held that notification under section 4 of the Act was issued on March 30, 1979; whereas award was made by the Land Acquisition Officer on March 29, 1984 and, therefore, the claimants were entitled to 30% solatium under section 23(2) of the Act on the market value of the lands as well as interest at the rate of 12% per annum on the market value from the date of issuance of notification under section 4 of the Act till making of the award. The Reference Court also held that the claimants were entitled to interest on the market value of the lands acquired at the rate of 9% per annum for the first year from the date of taking possession of the lands and for subsequent period at the rate of 15% per annum till the date of payment. The above referred to directions contained in judgment and award dated April 5, 1989 of the Reference Court have given rise to present appeals by State Government as well as Cross-Objections and cross-appeals by original claimants.

7. Mr.P.G.Desai, learned Government Pleader and M/s. B.D.Desai and U.A.Trivedi, learned Assistant Government Pleaders contended that the offer made by the Special Land Acquisition Officer was just as well as adequate and, therefore, enhanced compensation should not have been awarded to the claimants by the Reference Court. It was claimed that though awards rendered by the Reference Court in respect of similar lands may be relevant for the purpose of determining market value of lands acquired in this case, Exh.22 which is judgment of the Court rendered on October 29, 1988 relating to acquisition of lands situated in village Kosamadi, should not be relied on, as it has not become final and is subject matter of challenge in First Appeals No. 779/89 to 788/89 which are pending and are yet not disposed of. It was pleaded by the Government Counsel that judgment of the Court dated August 27, 1980 which is produced at Exh.46 and

which relates to determination of market value of lands situated in village Bhadkodra indicates that the price determined was Rs. 350/- per Are as on the date of section 4 notification which in that case was March 17, 1978 and as those lands were near National Highway No.8 and Railway Station, the said award should not be taken into consideration for determining the market value of the lands acquired in the present case. It was stressed that Exh.47 which is judgment of the Reference Court with regard to lands situated in village Gadkhol shows that price of the lands situated in village Gadkhol on the date of section 4 notification i.e. September 1, 1978 was Rs.450/- per Are; whereas in the present case, notification under section 4 was issued on March 13, 1979 but, in view of distance between the two villages, appropriate deductions should be made before relying upon the said award. It was asserted that the evidence of witness Jamolbhai Hirabhai Exh.91 does not show reasons or factors which prompted M/s. Dattani Development Corporation to pay price of Rs. 83,700/- for land admeasuring 1 Acre 32 Gunthason March 2, 1982 and as said land was of great advantage to the purchaser and as the purchaser had paid a special price for it, evidence of witness Jamolbhai should not be relied on for the purpose of determining the market value of the lands acquired in the present case. It was submitted that determination of compensation by the Reference Court is very much excessive and, therefore, the award made by the Reference Court should be set aside. In the alternative, it was pleaded that notification under section 4 of the Act was issued on March 30, 1979; whereas possession of the lands was taken on July 19, 1979 and the award was made by the Land Acquisition Officer on March 29, 1984 and, therefore, as the date of taking possession of the lands is earlier than the date of taking over possession of the lands, the Reference Court was not justified in directing the appellants to pay interest at the rate of 12% on the amount of compensation from March 30, 1979 to March 24, 1984 (the correct date should be March 29, 1984) in view of the provisions of Section 23(1-A) of the Act and, therefore, the award deserves to be modified accordingly. It was also pleaded that direction to pay interest at the rate of 9% per annum for the first year and for subsequent period till the date of payment at the rate of 15% per annum on amounts envisaged under sections 23(1-A) and 23(2) of the Act should be set aside in view of decision of Supreme Court in State of Maharashtra v. M.S.Hatkar, JT (1995) 2 S.C. 583.

8. M/s. R.M.Vin, Pranav G.Desai and M.R.Shah, learned Counsel for the claimants submitted that the

evidence of witness Jamolbhai Hirabhai Exh.91 read with Exh.93 which is certified copy of entry from Index register relating to sale of Survey no.205/1 of village Bhadkodara shows that the market value of agricultural land of village Bhadkodara in the year 1979 was Rs. 1150/- per Are and, therefore, the appeals filed by the State Government should be dismissed; whereas Cross-Objections and Cross Appeals filed by the claimants should be allowed. It was claimed that judgment of the Court dated October 29, 1988 produced at Exh.22 which relates to determination of compensation of the land situated in village Kosamadi furnishes reliable guideline for the purpose of determining market value of the lands acquired in this case and as price of the land determined as on October 7, 1980 which was the date of notification under section 4 of the Act in that case, was Rs. 750/per Are, the appeals filed by the State Government should be dismissed. It was pleaded that Exh.46 indicates that the market value of the land of village Bhadkodara on the date of issuance of Section 4 notification in that case which was March 17, 1978 was more than Rs. 350/- per Are, but as the claim was confined to Rs. 350/- per Are, Court had awarded the said amount as compensation and, therefore, having regard to development which had taken place near village Bhadkodara and other factors and in view of the fact that notification under section 4 of the Act in the present case was issued on March 30, 1979, the appeals and cross-objections filed by the claimants should be allowed. What was stressed was that Exh.47, which is judgement of the Reference Court, indicates that compensation for lands situated in village Gadkhol on the date of Section 4 notification i.e. September 1, 1978 was determined at the rate of Rs. 450/per Are and as notification in the present case under section 4 was issued on March 30, 1979, the appeals filed by the State Government deserve to be dismissed; whereas the cross appeals and cross-objections filed by the claimants deserve to be allowed.

9. We have been taken through the entire evidence on record by the learned Counsel appearing for the parties. We may state that the claimants who are represented by Mr. R.M.Vin, learned Senior Counsel have confined their claim to Rs.1000/- per Are in cross-objections; whereas others have claimed compensation at the rate of Rs. 1250/- per Are. In this case, notification under section 4 of the Act was issued on March 30, 1979 and, therefore, market value of the lands acquired will have to be determined as on crucial date of publication of notification under section 4 of the Act, which is March 30, 1979. The factors which have to be borne in mind



while determining market value of the lands are as under :-

- (1) Determined as on the crucial date of publication of the modification under S.4 of the Land Acquisition Act (dates of notifications under Secs.6 & 9 are irrelevant).
- (2) Determination has to be made standing on the date line of calculation (date of publication of notification under section 4) as if the valuer is hypothetically purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the lands at a reasonable price.
- (3) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.
- (4) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land).
- (5) Even post-notification instances can be taken into account, (1) if they are very proximate, (2) genuine and (3) acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.
- (6) Most comparable instances out of the genuine instances have to be identified on the following consideration:
  - (i) proximity from time angle
  - (ii) proximity from situation angle.
- (7) Having identified the instances, which provide the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustment for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.
- (8) A balancesheet of plus and minus factors may be drawn for this purpose and the relevant

factors evaluated in terms of price variation as a prudent purchaser would do.

- (9) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

The exercise indicated in clauses (1) to (10) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors-

Plus factors:

1. smallness of size.
2. proximity to a road.
3. frontage on a road
4. nearness to developed area.
5. regular shape.
6. level vis-a-vis land under acquisition.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.

The evaluation of these factors, ofcourse depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq.yds. cannot be compared with a large tract or block of land of say 10000 sq.yds. or more. Firstly, while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out road, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked-up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depends on whether it is a ruler area or urban area, whether building activity is picking up and

whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

These are general guidelines to be applied with understanding informed with common sense.

10. The claimants examined witness Jamolbhai Hirabhai at Exh.91. His evidence indicates that he was owner of survey no.205/1 situated in the sim of village Bhadkodara. The land owned by him admeasured 1 Acre 32 Gunthas i.e. 72 Are and 84 sq.mts. According to him, an agreement to sell was executed in the year 1979 and the land was sold by registered sale deed dated March 2, 1982 to M/s. Dattani Development Corporation for a sum of Rs. 83,700/-. He produced typed copy of sale deed at mark 89/2, but as neither original sale deed nor certified copy of sale deed was produced, the same was not exhibited by the Reference Court. He also produced xerox copy of entry from Index register issued to him under the provisions of Registration Act relating to sale of survey no.205/1 at Exh.93. In cross-examination he admitted that the land was of great advantage to the purchaser, as it was adjacent to G.I.D.C. He was not able to inform the Court as to which circumstances prompted the purchaser to purchase the said land. He admitted that after execution of agreement to sell, land was converted into non-agricultural land and thereafter sale deed was executed. He also admitted that he was not maintaining any accounts regarding his income. On behalf of the original claimants, civil application No.10785/98 has been filed seeking permission of the Court to produce certified copy of the entry from Index register relating to sale of Survey No. 205/1 situated at village Bhadkodara as additional evidence. It was ordered to be heard with main matter and we have also heard the learned Counsel appearing for the parties on the question of production of additional evidence. As noted earlier, xerox copy of entry from Index register is already on record and it was exhibited at Exh.93. It is relevant to note that at no point of time either State Government or the acquiring body had taken any objection to xerox copy being exhibited in the case. The claimants could not produce certified copy of the Index issued to them, as the same was produced in Land Acquisition Reference Case No. 90/85. Under section 51-A of the Act, certified copy of entry from index register relating to sale deed is made relevant, admissible and acceptable in evidence.

This application is filed because xerox copy of original certified copy of entry from index register was exhibited, though certified copy was not produced. The certified copy of the entry from Index register is relevant for the purpose of deciding issue involved in the appeals. Production of certified copy of the entry from Index register is for a substantial cause and, therefore, in order to do complete justice between the parties, the application deserves to be allowed. Under the circumstances, we are of the opinion that necessary permission deserves to be granted to the claimants to permit them to produce certified copy of entry from Index register relating to sale of Survey no.205/1 situated at village Bhadkodara. The application for additional evidence is, therefore, allowed. On instructions of their respective clients, learned advocates appearing for the parties have submitted purshis dated November 20, 1998 stating that the parties and their learned advocates have no objection if sale deed produced at Mark 89/2 is exhibited and read in evidence while deciding the appeals, cross objections and cross appeals. The reasons which prompted the parties and the learned advocates to file purshis are detailed in the purshis itself. Section 58 of the Evidence Act provides that facts admitted need not be proved. It is provided in the said section that no fact need be proved in any proceedings, which parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands. We may mention that execution of the deed is proved by witness Jamolbhai Hirabhai who is examined at Exh.91. In view of the purshis filed by the parties and their learned Counsel, true copy of the sale deed dated March 2, 1982 which was produced at Mark 89/2 is exhibited at Exh.92/A. In view of what is stated in the purshis, contents of the sale deed will have to be taken into consideration while ascertaining market value of the lands acquired. Exh.92/A shows that witness Jamolbhai Hirabhai had agreed to sell land bearing survey No.205/1 of village Bhadkodara to Thakorbhai Mandas Patel at the rate of Rs. 10/- per sq.mt. by Banakhat dated March 3, 1979. In the sale deed, it is further mentioned that Thakorbhai Mandas Patel had executed deed dated October 17, 1981 in favour of witness Jamolbhai Hirabhai. It is also mentioned in the sale deed that out of the total consideration of Rs. 83,700/-, a sum of Rs. 11,700/- was paid by witness Jamolbhai Hirabhai to Thakorbhai Mandas Patel as profits. It means that if the sum of Rs. 11,700/- is deducted from the total consideration of Rs. 83,700/-, the net sale price would be Rs. 72,000/-, which in turn would indicate that the land was sold at the rate of Rs.

1000/- per Are. It is relevant to notice that after execution of agreement to sell in favour of Thakorbhai Mandas Patel, user of land was converted from agricultural to non-agricultural. Therefore, mention in the sale deed that agricultural land was agreed to be sold to Thakorbhai Mandas Patel at Rs.10/- per sq.mt. does not inspire any confidence. If the price of agricultural land in the year 1979 had been Rs. 10/- per sq.mt., non-agricultural land would not have fetched price at the rate of Rs. 10/- per sq.mt. and that too after three years. Moreover, witness Jamolbhai Hirabhai has not produced agreement dated October 17, 1981 executed by Thakorbhai Mandas Patel in his favour, which is referred to in Para-6 of the sale deed. Admittedly, the agreement to sell dated March 3, 1979 was never acted upon and it is nobody's case that the said agreement was acted upon by the parties or that consideration mentioned therein was paid by Thakorbhai Mandas Patel to Jamolbhai. Having regard to all these attending circumstances, we are of the opinion that 35% deduction will have to be made from the price of the land mentioned in agreement to sell dated March 3, 1979 for the purpose of ascertaining market value of agricultural lands situated in village Bhadkodara in the year 1979 which would bring rate at Rs. 650/- per Are. Though the application for additional evidence filed by the original claimants is allowed, it is not necessary to make a detailed reference to the same, as by consent of the parties, typed copy of sale deed which was produced by witness Jamolbhai Hirabhai is received and read in evidence.

11. Over and above the sale instance referred to by witness Jamolbhai Hirabhai, claimants have also relied on awards rendered by Reference Court in respect of similar and/or adjacent lands produced at Exhs. 22, 46 & 47. Award of Reference Court relating to adjoining village or the same village of similar offers a comparable base for determination of compensation more particularly in absence of any material as regards the distinctive features of differentiation between the quality of the two lands. The awards sought to be relied upon by the claimants relate to lands of villages Kosamdi, Bhadkodara and Gadkhol. The evidence on record establishes that the acquired lands are possessed of similar potentiality and advantageous features as noted with regard to the lands acquired earlier. Therefore, we will now proceed to consider those awards for the purposes of ascertaining market value of the lands acquired in the present case. Exh. 22, which is judgment dated October 29, 1988 of the Reference Court, shows that the lands of village Kosamadi were acquired for public purpose and notification under

section 4 was published in the said case on January 29, 1981. The Court therein determined the compensation at the rate of Rs. 750/- per Are. However, this judgment cannot be relied on for the simple reason that it is subject matter of challenge in First Appeals No. 779 of 1989 to 788 of 1989 which are pending and are not yet disposed of. As it is not a final award, in our opinion, it would not furnish good guidance for the purpose of determining market value of the lands acquired in the present case and, therefore, we have not taken into consideration the said judgment. Even if it is assumed for the sake of argument that award produced at Exh.22 should be taken into consideration for the purpose of determining market value of the lands acquired in the present case, we notice that in the said case, notification under section 4 was published on January 29, 1981; whereas in the present case notification under section 4 was published on March 3, 1979. Having regard to the distance between two villages, namely, Kosamdi and Bhadkodara and in view of time lag between publication of notification under section 4 of the Act in two cases, we are of the view that necessary deduction will have to be made from the price determined for the lands of village Kosamdi in order to ascertain the market value of the lands acquired in the present case. If appropriate deductions are made, we are of the opinion that market value of the lands acquired cannot be assessed more than Rs. 650/- per Are. Exh.46 is the judgment of the Reference Court dated August 27, 1980. It indicates that Section 4 notification was published on March 17, 1978 for acquiring lands of village Bhadkodara admeasuring 37 Are & 60 sq.mts. The judgment shows that the claimants had claimed Rs. 350/- per Are and relied on previous award made by the Court with reference to lands of village Bhadkodara which were acquired for this very purpose. It was noticed that in the earlier award, Court had fixed compensation at the rate of Rs. 325/- per Are for the lands of village Bhadkodara as on April 30, 1976 which was the date of notification under section 4 of the Act. The Court was of the opinion that the claimants would be entitled to compensation at the rate of Rs. 350/- per Are, as Court had to determine market value as on March 17, 1978. Though it was held by the Court that the claimants would be entitled to compensation at the rate of Rs.350/- per Are, an opinion was expressed by the Reference Court that they were entitled to more compensation than at the rate of Rs. 350/- per Are. However, the Court did not grant compensation more than Rs. 350/- per Are, as the claimants had claimed only Rs.350/- per Are. A reasonable reading of Paras 8, 9, 10 & 11 of the judgment which is produced at Exh.46 would

indicate that if the claimants had not confined their claim to Rs. 350/- per Are, in all probability, the Court would have awarded Rs. 600/- per Are. It is relevant to note that in Exh.46 the compensation was determined with reference to notification which was issued on March 17, 1978; whereas in this case, notification under section 4 of the Act was issued on March 30, 1979. Having regard to the judgment of the Court, which is produced at Exh.46 as well as development which had taken place in the nearby area and the time lag between two notifications issued under section 4 of the Act, we are of the view that the market value of the agricultural land as on the date of notification under section 4 was Rs. 650/- per Are. Again, Exh.47 which is judgment dated 30.4.1982 of the Reference Court indicates that 3 Are 79 Sq.mts. of lands situated in village Gadkhol were acquired and notification under section 4 was issued on September 1, 1978. The price of the land determined by the Court is Rs. 450/- per Are. It is relevant to notice that village Gadkhol is just adjoining village Bhadkodara. In the present case, notification under section 4 was issued on March 30, 1979 and, therefore, having regard to development and other factors, if reasonable rise in price is considered, market value would come to Rs. 650/- per Are. Learned Counsel for the claimants also relied on judgment dated January 29, 1991 rendered by the Division Bench of the High Court in First Appeal No.1549/79. Therein, notification for acquisition of land bearing survey no. 169, admeasuring 1 Hectare 73 Are of village Bhadkodara was published in the Gazette on January 22, 1976. The acquisition was for water supply scheme of Ankleshwar industrial area of Gujarat Industrial Development Corporation. The Land Acquisition Officer had fixed compensation at the rate of Rs. 160/- per Are as against claim of Rs. 500/- per Are. The Reference Court awarded compensation by evaluating market price at the rate of Rs. 325/- per Are. The High Court by the said judgment fixed market price of the acquired lands at the rate of Rs. 350/- per Are. It is relevant to note that in the said case, notification under section 4 of the Act was published on January 22, 1976; whereas in the present case, notification under section 4 was published on March 30, 1979 and, therefore, if reasonable rise in price is considered in view of time lag between two notifications issued under section 4 of the Act, we are of the opinion that compensation of acquired lands will have to be determined at the price of Rs. 625/- per Are. It is necessary to note that the claimants had produced certified copy of entries from Index register relating to certain sale deeds at Exhs. 60, 61, 62, 63 67 as well as lease deeds at Exhs. 64, 65, 66 & 92, but

the claimants had neither examined vendor or vendee nor lessor or lessee in support of their claim. Though the entries from Index register have been exhibited, the claimants had not furnished any relevant and material data to enable the Court to determine the compensation in the present case on the basis of those documents. The circumstances which prompted vendors to sell and vendees to purchase the lands or lessors to lease out the property are not brought on record of the case by the claimants. Therefore, we are of view that no error was committed by the Reference Court in not relying upon the entries from Index register produced by the claimants because of non-examination of the vendors or vendees or lessors or lessees as the case may be.

12. The evidence of witness Chimanlal Jerambhai Patel Exh.59 and that of witness Jamolbhai shows that the lands acquired are quite nearby the area which was already developed at the time when the notification under section 4 was issued. In village Piraman, which is quite adjoining to village Bhadkodara, there are several industries, hospitals, shopping centres, factories, such as, Gujarat Cable, Dinesh Mill, Shramjivi Paper Mill, Khandsari, Card Board factory etc. The evidence of witnesses examined would also show that commercial activities had already started in the sim of village Bhadkodara at the time when the notification under section 4 of the Act was issued. Having regard to the market value indicated in the awards of the Reference Court and sale instance produced by the claimants as well as proximity of the lands acquired to already developed area and potentiality of the lands for commercial use etc., we are of the opinion that market value of the lands acquired should be determined at Rs.650/- per Are. While determining the market value of the lands acquired, we have identified the sale instances as well as awards of the Reference Court with respect to similar or adjacent lands which provide the index of market value and we have taken the price reflected therein as the norm for determining market value of the lands acquired. Before determining market value of the lands acquired, we have also made suitable adjustments for plus and minus factors vis-a-vis the lands acquired. Having regard to the oral and documentary evidence as well as the relevant circumstances, we hold that the claimants are entitled to compensation at the rate of Rs. 650/- per Are.

13. In the operative part of the impugned judgment and award, the Reference Court has ordered that the present appellants shall pay additional compensation to the claimants as shown in Column 11 as additional



compensation with running interest at 9% per annum for the first year from the date of award and for subsequent period till the date of payment with running interest at 15% per annum with proportionate costs. A bare look at Column 11 of the Schedule forming part of the impugned judgment makes it evident that the additional compensation determined by the Reference Court as payable also includes solatium payable on the additional amount of compensation as well as interest at the rate of 12% on the additional compensation. Therefore, direction to pay interest on the amount of interest determined under section 23(1-A) of the Act as well as on the amount of solatium found payable on the additional amount of compensation, should not have been given. We may state that the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 220/per Are; whereas the Reference Court determined compensation payable at the rate of Rs. 590/-per Are and, therefore, interest at the rate of 12% under section 23 (1-A) of the Act as well as solatium having been paid on the additional amount of compensation, further direction to pay 9% interest for the first year from the date of award and for the subsequent period till the date of payment with running interest at the rate of 15% per annum should not have been given. This is so in view of the decision of the Supreme Court rendered in the case of State of Maharashtra vs. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 582. The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under:-

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso."

Therefore, operative part of the order in so far as it directs the appellants to pay interest at the rate of 9% for the first year from the date of award and for subsequent period till the date of payment at the rate of

15% per annum is set aside in so far as amounts envisaged under sections 23(1-A) and 23(2) of the Act are concerned.

14. As noticed earlier, the Reference Court has directed that the claimants would be entitled to interest at the rate of 12% from March 30, 1979 to March 24, 1984, as notification under section 4 of the Act was issued on March 30, 1979; whereas award was made by the Special Land Acquisition Officer on March 24, 1984. Section 23(1-A) of the Act reads as under :-

"23(1-A) : In addition to market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation : In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded."

A bare reading of the above quoted provision makes it clear that in addition to market value of the land, Court has to award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of publication of notification under section 4 to the date of the award of the Collector or date of taking possession of the land whichever is earlier. The Reference Court has recorded a positive finding of fact that in the present case, possession of the lands was taken on July 19, 1979. This finding is not assailed by the claimants. As the date of taking possession of the lands is earlier than the date of the award of the Special Land Acquisition Officer, the Reference Court should not have held that the claimants were entitled to the interest at the rate of 12% per annum from March 30, 1979 to March 24, 1984 i.e. from the date of publication of notification under section 4 to the date of the award of Special Land Acquisition Officer. Under the circumstances, said direction will

have to be set aside.

For the foregoing reasons, Civil Application No. 10785/98 is allowed, with no order as to costs. The appeals filed by the State Government are partly allowed. It is held that the claimants would be entitled to interest at the rate of 12% per annum under section 23(1-A) of the Land Acquisition Act, 1894 from March 30, 1979 to July 19, 1979. The claimants shall not be entitled to interest on the amount envisaged under section 23(1-A) and 23(2) of the Act. Cross-Objections and cross appeals filed by the claimants are partly allowed and it is held that the claimants would be entitled to compensation at the rate of Rs. 650/- per Are with 30% solatium on the additional amount of compensation and interest at the rate of 9% for the first year from the date of taking of the possession of the lands and for the subsequent period at the rate of 15% per annum till the date of payment. The appeals filed by the State Government as well as cross-objections and cross appeals filed by the claimants are accordingly, disposed of, with no order as to costs. Office is directed to prepare the decrees in terms of this judgment.

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